

**Providing Financial Services to
Native Americans in Indian Country**

**Native American Working Group
Office of the Comptroller of the Currency
Washington, DC
July 1997**

A Message from the Comptroller

In 1994, I established the Office of the Comptroller of the Currency's (OCC) Native American Working Group. The group is composed of experienced staff members from several OCC divisions, and is headed by the director of our Community Development Division. One of the group's projects was to conduct a study on how some banks have effectively offered products and services to Native Americans living in Indian country. The results are contained in this booklet.

The study's results generally suggest that banks have made significant progress in recent years in delivering products and services to Indian country. However, I believe more can and should be done. Although unique legal and cultural differences exist, serving the Native American community involves skills and techniques similar to those banks use to serve other types of communities in their service area. Many of the same fundamentals of effective banking can be applied successfully in serving Native American communities. I hope that the successes and failures highlighted in this study provide useful guidance as banks continue their efforts in this important area.

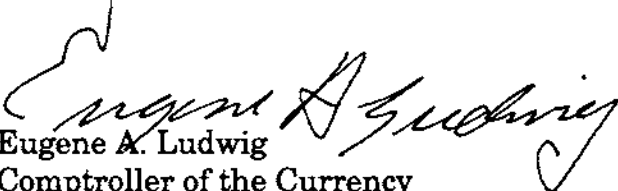
OCC staff members met with individuals at various banks to determine the types and delivery methods of products and services offered to their Native American customers. All of the banks in the sample provide both traditional and creative products and services to Native Americans. These banks also use alternative delivery methods to make products and services more accessible. Alternative delivery methods include the use of automated teller machines, mobile branches, and shared offices with other businesses in Indian country. Programs to help educate Native American customers and encourage savings are also provided.

Banks in the study offered the following advice on how a bank can effectively provide financial services to Native Americans in Indian country: build relationships with the tribes in the bank's trade area; provide more education concerning bank products and services; offer products and services that are requested or needed by the Native American community; and, be flexible in designing and delivering products and services. In other words, success in serving Native American communities is built on adapting and applying the

fundamentals of sound banking to this new market environment. Above all, bankers participating in the study advised other bankers to be patient as tribal relationships are built slowly.

The OCC is committed to increasing the availability of credit and other financial services to Native Americans living in Indian Country. If anyone identifies an OCC regulation or procedure that is a barrier to national banks providing financial services or products to Native American communities, the OCC will reevaluate its purpose and impact and provide regulatory flexibility, as appropriate. I hope that the information contained in this study will help more banks offer financial products and services in Indian country and alleviate some of the misconceptions that may limit access by Native Americans to those products and services.

I would like to extend my appreciation to the national banks that participated in this study, and I congratulate them for their efforts. Questions or comments about this study can be directed to the Community Development Division at the Office of the Comptroller of the Currency, Washington, D.C. 20219. You may also call 202-874-4940 or visit the OCC's Web site at <http://www.occ.treas.gov>.


Eugene A. Ludwig
Comptroller of the Currency

PROVIDING FINANCIAL SERVICES TO NATIVE AMERICANS IN INDIAN COUNTRY

Historically, Native Americans¹ living in Indian country have not had access to the same level of financial services generally available to the rest of the country, and providing services to Native American communities often was viewed as presenting unusual challenges and impediments. To address these issues, the Office of the Comptroller of the Currency (OCC) studied methods being used and techniques being developed by national banks today to provide financial services in Indian country.

A subgroup of the OCC's Native American Working Group conducted a study designed to determine:

- What financial services are currently provided.
- What financial service delivery methods have been successful, according to bankers, and why.
- What financial service delivery methods have not been successful, according to bankers, and why.
- What financial services national banks would like to provide and are considering offering.

The working group chose a sample of banks based on asset size and the nature, level, and geographic distribution of financial services provided. Members of the working group, accompanied by examiners and/or field managers responsible for the bank's supervision, met with each bank. The topics of discussion at each meeting were specific to the particular institution and depended on the nature and extent of the bank's programs for providing financial services to Native Americans living in Indian country.

The information gathered from these meetings was compiled and analyzed, and the results are contained in this report. Throughout this report, the term Native

¹This report uses the terms Native American and Indian interchangeably. This usage is meant to reflect the variety of terms used in federal Indian law.

American refers to American Indians or Alaskan Natives.² The term Indian country includes Indian reservations, dependent Indian communities, and all Indian allotments.³ A glossary of terms accompanies this report.

Summary

An important factor when banks attempt to offer products and services in Indian country is the bankers' ability to recognize the problems and needs of tribes in their market areas. The primary problems identified are often quite basic – a lack of access to financial products and services by Native Americans and the unfamiliarity of many tribal members with the concept of banking and financial management.

Correspondingly, many banks are unfamiliar with tribal cultures and may not know how best to meet tribal financial product and service needs. In this regard, banker education can be critical to making products accessible to tribal communities. Increased awareness of tribal culture, rules, and regulations prescribed in tribal codes, the needs of the Indian community, and the financial sophistication of the tribal members and tribal governments enable banks to establish good working relationships with the tribal communities in their trade areas. It is also fosters open communication where discussion on the needs and availability of financial products and services can be initiated by either party.

The study found that the most important factor in solving these problems is consumer education. Both banks and tribal members may benefit from providing more education on financial management, banking concepts, and the characteristics of individual products and services offered through banks. Banks that have provided education, or access to education, have found it rewarding in

²OMB Directive #15, *Race and Ethnic Standards for Federal Statistics and Administrative Reporting*, defines an American Indian and Alaskan Native as “a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliations or community recognition.”

³Indian country is formally defined as, “(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.” See 18 USC 1151. As used in this report, Indian country also includes New Mexico pueblos, Indian communities in Oklahoma and Alaskan native lands.

terms of profit and in the establishment of good working relationships with Native American customers.

Banks interviewed for the study particularly would like to increase the volume of mortgage and other lending, to Native Americans living in Indian country. However, perfecting a security interest in a loan's underlying collateral and access to the collateral in the event of default can prove difficult. More work needs to be done to resolve issues of foreclosure and title restrictions to increase the availability of credit. Government programs have been developed to assist in the lending area. However, they are paperwork intensive. Paperwork reduction in this area could foster increased credit availability.

Keys to Success

Education

Some Native Americans living in Indian country may be unfamiliar with traditional bank products and services. Additionally, their knowledge of personal financial management techniques may be limited or dated in view of the variety of products and services in today's marketplace. These situations create a barrier between the availability and use of bank products and services. To help overcome this barrier, many banks in the study provide financial education to their customers by sponsoring periodic seminars. Seminar topics have included savings, loan application process, cash flow, money management, budgeting, and home ownership. These seminars help Native American participants better manage their money and obtain credit, and result in new and stronger customer relationships and better quality credits.

Example: A bank participates in a housing loan program for the purchase and rehabilitation of homes, most of which are not in industry standard mortgageable condition. The bank works with nonprofit partners who refer applicants to the bank. The program is available to everyone. To benefit from the program, the applicant must successfully complete an eight-hour buyer education course. The class includes basic financial education to help the applicant understand his or her current financial condition, an explanation of the information required by the bank to process a loan, and a discussion of how the applicant and the bank can work together to make a loan possible. The classes are usually taught by the nonprofit partners, but are supported by the bank.

Example: Beginning in 1991, a bank established a development fund, which contained an educational element. The fund was capitalized using a \$95,000 grant from the Department of Agriculture Rural Business Enterprise. Existing institutions in the community provide the educational component. The focus is on middle school and adult education. The bank's intent in addressing middle school students is to teach them the value of saving while they are young so that they are prepared for greater financial responsibilities by the time they reach adulthood. The focus of adult education is to identify problems, if any, in the adults' credit history and to examine ways to improve his or her current credit status.

Accessibility

Making a product accessible to potential customers is a fundamental of the banking business. The study revealed several methods being used to effectively provide access to financial services in Indian country. Almost all banks in the study have automated teller machines (ATMs) in Indian country or in areas readily accessible to Native Americans. Although an ATM is not a substitute for a full service branch, the existence of ATMs helps overcome obstacles presented by the great distances or remoteness that sometimes characterize Indian country.

Access is also provided by a variety of types of branches. Some branches are freestanding,⁴ while others are in shared quarters (such as with a clinic). Banks also use mobile units to provide either full services or services not readily accessible through an ATM. The type of facility used to provide services in Indian country largely depends on the area the bank needs to cover and the concentration of people in the given area.

Example: In order to provide banking services in small, remote areas, one bank devised a program in which it entered into arrangements with people acting as bank representatives in those areas. The bank began the program with four community agents, who are individuals not otherwise engaged in the banking business and who provide banking services exclusively involving the bank.

⁴Because of the issue of land ownership on reservations, some banks have established branches in Indian country through the use of a lease arrangement. Pursuant to the lease contract, the bank leases the property directly from the tribe. The tribe obtains a loan to build the branch and the loan is repaid using rent proceeds. If the bank closes the branch, title to the land remains with the tribe.

Community agents help customers open checking and savings accounts, assist in completing credit application forms, act as a conduit between loan applicants and a bank loan officer, and provide information to local residents about bank products, services, and day-to-day activities such as balancing a checkbook. Any funds passing between the bank and the customer in connection with a loan or deposit account established in this manner are sent through the mail.

The bank currently has community agents in five rural communities. It is important to the bank that the agents be individuals who are part of and accepted by the community. The agents' quality and characteristics are crucial to the program's continued success. All of the agents receive extensive and continuous training. The sites were selected based on the bank's knowledge of each location, e.g., economic bases, culture of the individual location, potential for economic growth, etc.

Products and Services Offered

The banks visited offered the same products and services to Native Americans living in Indian country as those offered to the general public. Additionally, nontraditional programs are offered by some banks. The banks found that these programs helped enlarge their customer base, ensured that they were meeting the needs of their community as required by the Community Reinvestment Act, and also increased profitability.

Credit

The banks in the sample offer the same retail credit products to Native Americans living in Indian country as they do to the general public. However, some Native Americans have difficulty obtaining credit because of their lack of credit history or previous poor loan performance. The education processes discussed earlier have helped potential borrowers improve their creditworthiness.

The study found that banks have established programs and worked closely with tribes to help more Native Americans obtain credit. Some programs are of the type also available to the general public, but others may be more tailored to Native American community markets. Examples of these programs include requiring educational seminars for borrowers; obtaining guaranties from the borrower's tribe, the Small Business Administration, and/or the Bureau of Indian Affairs; advancing credit for small dollar amounts until the borrower establishes

a credit history; and working with the tribes to simplify the collateral repossession process in the event of default. Banks also have found it helpful to secure legal counsel with expertise in the area of Indian law to deal with issues concerning sovereign immunity, perfection of title, and collections pursuant to specific tribal law.

Banks have not been as successful in offering mortgage loans and cite the following problems: inability to perfect title on trust land, sovereign immunity, inability to foreclose in the event of default, and the paper-intensive process associated with government programs. Nevertheless, some banks have overcome these obstacles and are providing mortgages in Indian country. These banks have established good working relationships with the tribes to address the issues of sovereign immunity, tribal civil jurisdiction, and foreclosure proceedings. A number of banks indicated they have started, or will soon start, offering mortgage loans through the Department of Housing and Urban Development's 184 program.

Example: A Native American tribe, a bank, and Fannie Mae developed a special mortgage program for tribal members. The community housing coordinator contacted the bank to establish a program that extends credit on and off trust lands. The tribe, which has substantial earnings, did not want any federal or state involvement and did not wish to grant even a limited waiver of its sovereign immunity. Therefore, the bank worked with Fannie Mae to create a program where the bank would originate conventional loans for on-reservation lands. Fannie Mae sells the loans on the secondary market and the tribe acts as guarantor by providing a 100 percent guaranty, with 15 percent of the funds in cash reserves. In case a borrower defaults, there are three options: (1) the tribe makes the payments; (2) the tribe buys out the loan and takes action itself against the borrower; or (3) the bank forecloses on the loan on behalf of Fannie Mae, which uses the cash reserves to settle the balance. All three options prevent removal of Indian land from trust land status.

Example: At a tribe's request, a bank developed a loan program in 1988 to help tribal members purchase homes. The program provides down payment and closing cost assistance to tribal members. An individual member or family belonging to the tribe and requesting this type of assistance must apply to the bank and the tribe's office of land management. The bank evaluates the application using its standard underwriting criteria for mortgage loans. If approved, the bank will lend up to 80 percent of the purchase price, and it will take a first lien on the property. The tribe will take a second lien on the

property to finance the down payment (up to 20 percent of the purchase price) and related closing costs. If the loan becomes delinquent, the bank will first go to the borrower for collection, then to the tribe. If the tribe intervenes, it pays off the bank's loan and resells the property to another tribal member. To date, the bank has not had a loss under this program.

Most banks in the study provide loans to support tribal and individual credit needs. For example, some banks provide financing to support the tribe's gaming activities, including facility construction and working capital loans to support the activity. Loans also have been provided to help develop the reservation's infrastructure, including construction of community facilities, schools, and hospitals. Banks also provided loans to tribes and tribal members during the 1995 government shutdowns, which delayed government payments owed to the tribes, tribal members, and government-operated facilities used by Native American communities (e.g., hospitals).

Example: During the federal government shutdowns, a bank developed an emergency loan program, that was guaranteed by the tribe using tribal deposits. The average loan was \$2,000, and the funds were used by tribal members to purchase essentials (e.g., food, gas, etc.). In 30 days, the bank made more than 150 loans totaling more than \$325,000. The bank was comfortable doing this based on the word of the tribal governor and the 40-year relationship the bank has with the tribe. This program provided many tribal members with their first credit experience. Because of the success of this program, the bank is going to expand the program to include small business and farm loans, and may extend it to other tribes.

Deposit Services

Banks have made traditional deposit services more accessible to Native Americans living in Indian country through branches on the reservation, mobile branches, and ATMs. These facilities typically are staffed by people who speak the tribe's native language. Programs such as coupon savings and special accounts for school-age children also have been established to encourage savings.

Direct deposit and automatic debit programs for loan payments are also offered to tribal members. As an incentive to use these programs, banks have reduced the interest rate on loans up to 50 basis points. The direct deposit program, coupled with an automatic debit program for loan payments, reportedly has reduced delinquencies.

Nontraditional Activities

Some banks serve as a financial advisor to tribes, including showing them how a bond issue can be more cost-effective than a loan. The positive features for a bond issue may include lower cost of funds, access to a larger amount of funds, diversification of funds providers, and better access to the market. Banks have also underwritten bond issues and provided credit enhancements such as letters of credit.

Banks also provide cash management services, payroll and merchant processing, coin wrapping services for casinos, investment alternatives (such as mutual funds, Treasury Direct service, and long-term investments), trust services for tribal funds (including education funds that guarantee a college education for every tribal member), and automated clearing house services. They also contribute and participate in community development corporations (CDCs) and provide credit indirectly through tiered-lending. Tiered-lending is a process in which a bank lends funds to a credit association or other entity, which then uses the funds to make smaller loans to individuals.

Example: A bank provides a \$250,000 line of credit to a Native American tribal credit association secured by a \$100,000 certificate of deposit. The credit association makes real estate, consumer, and agricultural loans to tribal members using the bank's funds. For these members' loans, the credit association assumes the risk, collects the loans, and deals with repossessions, if necessary. When \$100,000 in loans has been made, the bank will begin taking performing loans as collateral. The bank approves the credit association's underwriting standards, receives a quarterly aging report, and conducts an annual audit. This credit is treated as an accounts receivable line.

Example: In an effort to improve a tribes' cash management and income streams, a bank has provided trust investment services to the tribe. Sweep accounts and money market mutual funds have been used to help the tribes maximize earnings on their working cash accounts. Presently, the bank has 13 relationships totaling over \$22 million.

Example: A bank is working in partnership with a tribe, another bank, and various foundations. The partnership plans to form a CDFI to meet the specialized financial needs of customers not meeting the bank's traditional underwriting standards. To date, a

\$15,000 grant has been received. The tribe asked the bank to place an office or branch on its reservation; however, this was not possible for the bank. Another bank in the partnership has agreed to place a branch on the reservation once certain legal conditions are met. Other tribes may join the CDFI if they have the legal structure to do so and those tribes can provide capital, management, and community development to the CDFI.

Identifying Needs

Banks use many methods to identify the types of services to offer. The most frequently used and most effective method is another sound banking fundamental – establish and maintain good working relationships with customers, and in the case of Native American communities, particularly with tribes. The study shows that when good working relationships are established, the tribes are more inclined to discuss the needs of the tribes and their members and work with the banks in providing needed services. A good working relationship also helps a bank test whether new products and services are needed and would be used by the tribes.

Obviously, there are many ways to establish good tribal relationships. Many banks routinely visit tribes to understand what products and services are needed and to enrich their cultural awareness. Visits may take place with tribal leaders, tribal members, or tribal councils and advisory committees. Banks are often represented by members of management, although in some cases a task force or special bank officer position has been created to establish this relationship.

Other methods for identifying services to offer include using customer and noncustomer surveys, obtaining information from CDCs, and conducting outreach activities through the use of advisory boards and agents representing the bank. Examples of outreach activities include bank representation and participation at Indian conferences, presentations to tribal councils, and participation in community forums with the aim of working together to assess the community's banking and financial needs.

Example: A bank enters into partnerships with agricultural corporations in remote areas. Most of these corporations were established in specific locations to develop the local economy. Because of their remote location, the communities rely on the corporations for financial services. Corporation representatives assess the need for loans in the community and determine whether to fund loans to the applicants. When a corporation approves an

applicant for a loan, the corporation faxes the executed loan documents to the bank, which processes and services the loan. The corporations fund the loans while the bank services the loans for a fee. The bank provides the corporations with a cost-effective way to process and service the loans so the community can gain access to credit.

Marketing Products and Services

Word of mouth is often considered the most effective tool for marketing bank services and products in Indian Country, as is the case in other community markets in which banks operate. Banks also work to supplement word-of-mouth marketing through meetings with Indian housing authorities, tribal leaders, councils, and members, and working in partnership with nonprofit groups.

Visibility is another important marketing tool, which may take the form of ATMs, offices, and branches on reservations, or sponsorship of seminars, scholarships, and public activities (e.g., school events). Again, these are well recognized community banking marketing techniques. Applied in Indian country, they take the form of advertising in Native American media such as radio, newsletters, and newspapers. Advertisements are often in the native language, or a combination of English and the native language. The advertisements also relate traditional values of the Native American culture with modern day banking. Some banks take the extra step of providing bank literature and materials in the area's dominant Native American languages.

Unsuccessful Products and Services

Most of the banks in the study offered either a product or service that was not successful. The most common line of unsuccessful business reported was real estate lending. The reasons banks cited for why some products or services were unsuccessful include:

- The banks were unable to perfect a security interest in the loan's underlying collateral.
- Paperwork associated with government-guaranteed programs was too cumbersome.

- In cases in which Native Americans did not meet the bank's underwriting criteria, some tribes were either unwilling or unable to provide a credit enhancement.
- In some Native American cultures, there has historically been little demand for mortgage lending because individual home ownership is not a cultural attribute.
- There was little or no demand for construction financing.

As previously mentioned, it is important to understand the needs of the Native American community before offering products and services. Bankers reported that attempts to provide products and services that are neither requested by the Native American community nor provide an immediate recognizable benefit are unlikely to succeed.

Potential Offering of Products and Services

Most of the banks in the study indicated they would like to provide, or increase their level of, mortgage loans. The types of mortgage loans would extend to both on- and off-reservation housing as well as trust land and land held in fee-simple estate. However, some banks would like to see more tribes willing to guarantee repayment of the loans.

Banks are also interested in expanding the types and volume of other products and services offered, including deposit products, trust services (bond underwriting and management of tribal funds), and cash management services.

Bankers' Recommendations

As part of our study, we asked bankers what advice they would give other banks wanting to expand their services to Native Americans living in Indian country. Many of their recommendations were similar and, in the aggregate, they reflect a crucial message: success in providing financial products and services in Indian country does not require radical changes in how banks do business or in the products and services they provide. Rather, success comes from diligence in adapting and applying sound fundamentals of running a banking business to the new market environment of Native American communities. In particular, the bankers advised the following:

- **Provide education.** Banks repeatedly said there was a need to educate some tribes and tribal members on banking services and financial management. They emphasized that education is an important step to building relationships and understanding the Native American community's needs.
- **Build relationships with the tribes.** Most banks said that this process starts small and grows gradually. Yet, it is the foundation for establishing good business relationships with Indian communities.
- **Understand the culture and cultural differences.** Knowing your customer is critical to building a relationship. Bankers stressed the need to understand a tribe's culture in terms of how it does business, its values, the community structure, and the tribal leadership.
- **Include tribal members and/or leaders in the bank.** Several banks benefited from having tribal members and leaders on the bank's staff, on advisory committees, and on the board of directors. Involving tribal members provided a link that fostered communication between the bank and the community concerning the needs of the tribe and the products and services offered by the bank.
- **Understand the legal system.** Bankers also stressed the importance of a basic understanding of the legal framework for each tribe with which the bank does business, and the need for access to legal counsel with expertise in Indian law and who can practice in tribal courts.
- **Know who is responsible for tribal decisions.** Banks noted the importance of establishing a good working relationship with tribal leaders and the tribal council. Because of the potential for turnover of tribal leadership, many of the banks advised against becoming involved in tribal politics.
- **Be flexible.** The needs and level of financial sophistication are different for each tribe. Banks emphasized the need to be flexible, and to adjust traditional products and services to meet the needs and capacity of the tribe and its members.

For more information on this study, contact the Office of the Comptroller of the Currency, Community Development Division, Washington, D.C. 20219. You may also call 202-874-4940 or visit the OCC's Web site at <http://www.occ.treas.gov>.

Glossary

Collateral Repossession Process: The collateral repossession process is triggered by a default, typically the failure of the borrower to make timely loan payments. The process can entail several steps and is governed by state or tribal law. It usually begins with notification to the borrower. The lender must then demonstrate it has a valid lien on the collateral and must follow the law with regard to recovering the collateral, including in some cases, filing suit or posting the collateral for auction. Some states and tribes have restrictions on when the property can be resold and, in some cases, to whom it may be sold.

HUD 184 Program: A federal government guarantee program in which the Indian Housing Loan Guarantee Fund administered by the Department of Housing and Urban Development guarantees up to 100 percent of the unpaid principal and interest on mortgage loans made by an approved private lender to a Native American family or Indian Housing Authority.

Sovereign Immunity of the Tribes: Indian tribes are sovereign entities with the power of self-government within the United States. This status comes from their sovereignty as aboriginal peoples and from their relationship with the federal government under statutes, treaties, and other agreements. Sovereign immunity prevents a court from entering orders against the tribe itself in the absence of an effective waiver, but it does not extend to the rights of individual tribal members. The principle that tribes enjoy the sovereign's common law immunity from suit is well established. The immunity extends to agencies of the tribes.

Tribal Civil Jurisdiction: Except in certain states, tribal courts have exclusive jurisdiction over a suit by any person against an Indian for a claim arising in Indian country. Public Law 280 provides that certain state courts have jurisdiction to adjudicate disputes in Indian country located in those states. This law generally applies, with some specific exceptions, to Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin. Other states have asserted optional jurisdiction under Public Law 280.

Trust Land: This is land held in trust by the federal government, which holds the legal title, for the benefit of a tribe or individual. There are often restrictions on whether this land can be mortgaged. In the event of foreclosure, tribal trust land carries restrictions on transfers of title, especially to nontribal members.